

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 34669

STATE OF IDAHO,)	2008 Unpublished Opinion No. 718
)	
Plaintiff-Respondent,)	Filed: November 26, 2008
)	
v.)	Stephen W. Kenyon, Clerk
)	
MATTHEW CHARLES HODKE,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Michael E. Wetherell, District Judge.

Order relinquishing jurisdiction, affirmed. Judgment of conviction and unified fifteen-year sentence with five-year determinate term for enticing a child over the Internet, affirmed.

Molly J. Huskey, State Appellate Public Defender; Heather M. Carlson, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

PER CURIAM

Matthew Charles Hodke was convicted of enticing a child over the Internet, Idaho Code § 18-1509. The district court withheld judgment and placed Hodke on probation. Subsequently, Hodke admitted to violating several terms of his probation. The district court revoked Hodke's probation, imposed a unified fifteen-year sentence with a five-year determinate term, and retained jurisdiction. At the conclusion of the retained jurisdiction program, the court relinquished jurisdiction and ordered execution of Hodke's sentence. Hodke appeals the court's decision to relinquish jurisdiction and contends that the sentence is excessive.

The decision as to whether to place a defendant on probation or, instead, to relinquish jurisdiction is committed to the discretion of the sentencing court. *State v. Lee*, 117 Idaho 203, 205-06, 786 P.2d 594, 596-97 (Ct. App. 1990). It follows that a decision to relinquish jurisdiction will not be disturbed on appeal except for an abuse of discretion. *State v. Chapman*,

120 Idaho 466, 472, 816 P.2d 1023, 1029 (Ct. App. 1991). The standards governing the trial court's decision and our review were explained in *State v. Merwin*, 131 Idaho 642, 962 P.2d 1026 (1998):

“Refusal to retain jurisdiction will not be deemed a ‘clear abuse of discretion’ if the trial court has sufficient information to determine that a suspended sentence and probation would be inappropriate under [the statute].” While a Review Committee report may influence a court's decision to retain jurisdiction, “it is purely advisory and is in no way binding upon the court.” Idaho Code § 19-2521 sets out the criteria a court must consider when deciding whether to grant probation or impose imprisonment. . . . “A decision to deny probation will not be held to represent an abuse of discretion if the decision is consistent with [the § 19-2521] standards.”

Id. at 648-49, 962 P.2d at 1032-33 (citations omitted). The record in this case shows that the district court properly considered the information before it and determined that probation was not appropriate.

Where a sentence is within the statutory limits, it will not be disturbed on appeal absent an abuse of the sentencing court's discretion. *State v. Hedger*, 115 Idaho 598, 768 P.2d 1331 (1989). We will not conclude on review that the sentencing court abused its discretion unless the sentence is unreasonable under the facts of the case. *State v. Brown*, 121 Idaho 385, 825 P.2d 482 (1992). In evaluating the reasonableness of a sentence, we consider the nature of the offense and the character of the offender, applying our well-established standards of review. *See State v. Hernandez*, 121 Idaho 114, 117-18, 822 P.2d 1011, 1014-15 (Ct. App. 1991); *State v. Lopez*, 106 Idaho 447, 449-51, 680 P.2d 869, 871-73 (Ct. App. 1984); *State v. Toohill*, 103 Idaho 565, 650 P.2d 707 (Ct. App. 1982). When reviewing the length of a sentence, we consider the defendant's entire sentence. *State v. Oliver*, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007).

Having reviewed the record, we conclude that the district court did not abuse its discretion in imposing Hodke's sentence nor in relinquishing jurisdiction. The judgment of conviction and sentence, and the order relinquishing jurisdiction are affirmed.